IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL WRIT PETITION NO.4922 OF 1990

Central Warehousing Corportion Petitioners

Vs.

Goods Transport Labour Board
for Greater Bombay & ors. Respondents

Mrs.S.I.Shah for petitioners.
Mr.A.V.Bukhari for Resp.No.1.
Resp.No.2 served.
Mrs.S.S.Bhende, AGP for Resp.Nos.3 and 4.

CORAM: B.H.MARLAPALLE & D.B.BHOSALE,JJ.

March 07, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. In this petition filed under Article 226 of the Constitution the petitioner-Corporation is seeking a declaration that the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and the Scheme framed thereunder viz. the Goods Transport Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1971 and as amended in 1988 are not applicable to its godowns all over the State of Maharashtra and/or more particularly in and around Mumbai.

2. The petitioner is an undertaking of the Government of India established under Section 3 of

the Warehousing Corporations Act, 1962 and is carrying out the following activities as per Section 11 of the said Act:

(a) acquire and build godowns and warehouses at such suitable places in India as it thinks fit;

(b) run warehouses for the storage of agricultural produce, seeds, manures, fertilizers, agricultural implements, and notified commodities, offered by individuals, co-operative societies and other institutions;

(c) arrange facilities for the transport of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities to and from warehouses;

(d) subscribe to the share capital of a State Warehousing Corporation;

(e) act as agent of the Government for the purpose of the purchase, sale, storage and distribution of agricultural produce, seeds,

manures, fertilizers, agricultural implements and notified commodities; and

(f) carry out such other functions as may be prescribed.

3. It appears that a show cause notice dated 17/4/1989 came to be issued to the petitioner by the Inspector of Goods Transport Labour Board for Greater Bombay as set out under Section 6(1) of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "the Act" for short) and the said show cause notice came to be challenged before this Court in Writ Petition No.4947 of 1989. It appears that the said petition came to be disposed as withdrawn by the order dated 15/11/1989 and presumably because the petitioner wanted to approach the State Government by making an application inviting the State Government's opinion as to whether the scheme could be made applicable to its godowns. It is evident that such an application was submitted by the petitioner on 27/12/1989 and it appears that on the very next day i.e. 28/12/1989 the Advisory

Committee constituted by the State Government recommended to the State Government that the petitioner-Corporation and the workers engaged in its premises are governed under the provisions of the Act and it was necessary for the Corporation to register with the Board as the Principal Employer, as is evident from the letter dated 14/8/1990 addressed by the Asst. Director in Department of Industries, Government of Maharashtra to the petitioner. The learned counsel for the petitioner states that the recommendation of the Committee is required to be considered by the State Government which alone can take a decision as contemplated under Section 5 of the Act. The Secretary of the Respondent No.1-Board has filed affidavit-in-reply and has confirmed that on 28/12/1989 the Committee considered the petitioner's representation and after properly scrutinising the same it gave a decision in favour of the Respondent No.1-Board and against the petitioner. As per the petitioner any recommendation submitted by the Committee is required to be considered by the State Government and after affording an opportunity of hearing to the petitioner as well. In support of

this argument the learned counsel for the petitioner relies upon the scheme of Section 5 of the Act which reads as under:

> "5. If any question arises whether any scheme applies to any class of unprotected workers or employers, the matter shall be referred to the State Government and the decision of the State Government on the question, which shall be taken after consulting the Advisory Committee constituted under section 14, shall be final."

4. The State Government, though impleaded as one of the respondents, has not filed return and it is not known whether the State Government through the Department of Industries and Labour has taken any decision after the recommendations were submitted by the Advisory Committee on 28/12/1989 against the petitioner. Even in the return filed by the Respondent No.1 it is not stated whether the State Government has taken a decision as envisaged under Section 5 of the Act. On the one hand the learned counsel for the petitioner relies upon the

communication dated 7/10/1993 addressed by the Commissioner of Labour, Maharashtra State to the Chairman and Managing Director of the Maharashtra State Warehousing Corporation, Pune informing that the contractor engaged by the Corporation and who has been registered as such under Contract Labour (Prohibition and Regulation) Act, 1971, such a contractor is not required to be registered under the Act. Mr.Bukhari, the learned counsel appearing for the respondent no.1-Board on the other hand submitted that the very same Corporation viz. Maharashtra State Warehousing Corporation has been registered under the Act and the Scheme of 1988. In this regard our attention has been invited to the letter dated 25th February 1991 addressed by the Maharashtra State Warehousing Corporation, Pune to the Respondent-Board for registration under the Act along with an application for the said purpose and it appears that a letter for allotment of registered workers has been issued on 14/3/1999.

5. The fact remains that Section 5 of the Act mandates the State Government to take a decision and that too after consulting the Advisory Committee constituted under Section 14 of the Act. If the

Advisory Committee has submitted its recommendations way back on 28/12/1989, it is not known whether the State Government has taken a decision or the decision is still awaited. As noted earlier, there is no material before us to believe that the State Government has taken a decision on the representation submitted by the petitioner on 27/12/1989. It will be, therefore, necessary for the State Government to decide the petitioner's application after consulting the Advisory Committee, if the same is still pending and the declaration sought for in this petition cannot be granted by us. It is obviously a statutory function to be performed by the State Government under Section 5 of the Act.

6. In the premises we, therefore, direct the Government of Maharashtra through the Secretary, Department of Industries, Energy and Labour to decide the petitioner's representation dated 27/12/1989 in case the same is still pending, as expeditiously as possible and as per the provisions of law within a period of two months from the receipt of the writ from this Court. In case the Government has already taken a decision, then the same shall be communicated to the petitioner within a period of four weeks from

today.

7. The petition is disposed off in terms of the above directions. Rule is discharged with no order as to costs.

(D.B.BHOSALE,J.) (B.H.MARLAPALLE,J.)